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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

No. _____

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

MOTION FOR LEAVE TO FILE AND PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, OF THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

WALTER L. CLEMENTS,
South Bend, Indiana;

ELMER McCLAIN,
Lima, Ohio;

LUTHER B. BRATTON,
Kankakee, Illinois;

RAY M. FOREMAN,
Danville, Illinois;

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Huntington, Indiana,
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SAMUEL E. COOK,
Huntington, Indiana.

WM. LEMKE,
Fargo N. Dakota,
Counsel for Petitioner.

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Respondent and Appellee Below.

MOTION FOR LEAVE TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, OF THE SEVENTH CIRCUIT.

To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the petitioner James M. Wright by his counsel and respectfully moves said Honorable Court to grant him leave to file and present to this court the petition hereinafter set out for a Writ of Certiorari in said cause addressed to the United States Circuit Court of Appeals for the Seventh Circuit.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana,
Member of the Bar of the
Supreme Court.

WM. LEMKE,
Fargo, N. Dakota,
Counsel for said James M. Wright.

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IN THE MATTER OF JAMES M. WRIGHT,
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vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, OF THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, James M. Wright, a citizen of the United States and a resident of the County of Jay, in the State of Indiana, respectfully shows: That he is aggrieved by a judgment and order of the Honorable United States Circuit Court of Appeals for the Seventh Circuit entered on the 20th day of September, 1937. (R. (6183-84) p. 76) (opinion R. p. 44-51

inclusive) affirming an order of the District Court of the United States for the Northern District of Indiana (Fort Wayne Division) and declaring unconstitutional amended Subsection (s) of Section 75 of the Bankruptcy Act of the Congress of the United States, as amended by the Act of Congress, August 28th, 1935 (Chap. 792, Sec. 6, 49 Stat. U.S. 942) (Title 11 U.S.C.A. 203, designated in the Courts as the Amended Frazier-Lemke Moratorium Act), and denied the petitioner (an insolvent farmer) of the right to an extension of the period of redemption provided in said amended subsection in which to redeem his land and refinance himself from a sale thereof under a decree of foreclosure of the respondent's mortgage. Reported 91 F. (2nd) 894.

Your petitioner files and presents this, his petition for the issuance of a writ of certiorari to review said order and proceedings had in said United States Court of Appeals of said Seventh Circuit in said case.

The petitioner herein files herewith a certified transcript of the record and proceedings in said Court and the Court has ordered the original transcript in No. 6183 forwarded to the Clerk of this Court, together with a supporting brief as required by the Rules of this Honorable Court.

I.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.

The material matters leading up to the decision of the Circuit Court of Appeals are in substance as follows:

(1). The petitioner was an insolvent farmer who filed his petition under Section 75 of the Bankruptcy Act and amended it under Amended Sub-section (s) of August 28, 1935, in the District Court of the United States for the Northern District of Indiana (Fort Wayne Division) on October 29, 1934 (R. 6184-8).

(2). On petition of the respondent the Referee struck out certain real estate from his schedules. The petition to review this action was denied by the District Court. This is the first case. In the second, the District Court denied the petition to amend schedules A-2 and B-1. (R. 6184-9 opinion 44).

(3). From these orders of the District Court the petitioner appealed to the Circuit Court of Appeals of the Seventh Circuit (R. 6184-13-14) (R. opinion 44) (R. 6183-4-1) on assignment of errors duly filed. (R. 6184-11-12-13).

(4). The Circuit Court of Appeals consolidated the two cases under Nos. 6183-6184 (R. opinion 46) and in its opinion stated that both presented practically the same question. (R. opinion 44).

(5). The record was printed in 6184 and heard on the transcript in 6183. Hence, we will only refer to the printed record in 6184 hereafter.

(6). After several pages of discussion the Court in its opinion finally reached the conclusion that on August 28, 1935, he had an interest in the land—i.e. the right to redeem from the sheriff's sale and that on October 11, 1935, when he filed his amended petition under subsection (s) he still had the right to redeem, but that it would end on July 20, 1936 (one year from the date of the sale) unless said amend-

ment of August 28, 1935, operated to extend his right of redemption. (R. 6184 opinion 44).

(7). The Honorable Circuit Court of Appeals did not apply and follow the decision of the Supreme Court in the Wright case (March 29, 1937, 81 L. Ed. Adv. opinions 487) in said case but held that Congress had no power to extend the time of redemption and that said subsection (s) was unconstitutional and affirmed the decision and orders of said District Court in an opinion (set forth in full in R. 6184, pages 44 to 51 inclusive), and entered its final order therein on September 20, 1937. (R. 6183-4-76).

(8). That the petitioner filed his original petition in Bankruptcy under Section 75 of the National Bankruptcy Act as to the 200 acres on October 29th or 30th, 1934. (R. 6184-2-8). His rights under the then existing Bankruptcy Act and its amendments vested on said date.

That afterwards on July 20, 1935, the 200 acre tract was sold at Sheriff's sale and the statutory year of redemption began to run on said date. (R. opinion 47).

Thus it appears his original petition as to the 200 acres was filed nine months before the year of redemption began to run.

That this makes the facts in the case at Bar as to the 200 acre tract exactly like the facts in Wright vs. Mountain Trust Bank, (81 L. Ed. 487, March 29, 1937) in which this Court held said Subsection (s) valid.

That it will not be disputed but that the 80.31 tract was included in said petition and that it was sold at Sheriff's sale and the year began to run before said

petition was filed. That is, it was filed during said year. (R. 6184-4-6).

That the Court of Appeals should have applied the law as laid down by this Court in said Wright Case and held said Subsection (s) valid as to the 200 acre tract and reversed the decision of the District Court. The Court should have also applied said decision of this Court to said 80.31 acres and held Subsection (s) valid as to it.

II.

REASONS RELIED ON FOR GRANTING THE WRIT OF CERTIORARI.

(A). That on March 29, 1937, this Court in the case of Robert Page Wright vs. Vinton Branch of the Mountain Trust Bank of Roanoke, Va. (81 L. Ed. Adv. opinions 487) in passing on the constitutionality of amended Subsection (s) of Section 75 of the Federal Bankruptcy Act of the Congress of the United States (Frazier-Lemke Act) enacted August 28, 1935 (11 U.S.C.A. Sec. 203) held said amended subsection (s) constitutional and valid and that it extended the ordinary statutory period of redemption allowed in the States in the foreclosure of mortgages for the period of three years from said date, while on the other hand on July 3, 1937, the United States Circuit Court of Appeals for the 7th Circuit announced an opinion and afterwards a final order therein in the case of Fred J. Reardanz vs. The Connecticut Mutual Life Insurance Company of Hartford, Connecticut et al 91 Fed. (2nd) 410 in passing on the same subsection in said cause held that it was unconstitutional and that it did not extend said period of

redemption as provided therein and denied the insolvent farmer of the benefits of said remedial Act.

That on July 3, 1937, said Circuit Court of Appeals also in the case of James M. Wright (the case at Bar) pending in said Court 91 Fed. (2nd) 894 in passing on the same subsection in said cause held that it was unconstitutional and did not extend the period of redemption as provided therein and denied said farmer of the benefits of said remedial Act. That the final order and judgment was entered in said cause on September 20, 1937.

(B). That this has brought about a conflict and confusion in the decisions as to the proper construction of said subsection between said Federal Supreme Court and said Circuit Court of Appeals, which should be removed and uniformity promptly established.

(C). That this is not all. In the case of Dallas Joint Stock Land Bank vs. Davis (83 F. 2nd) 322 the United States Circuit Court of Appeals for the Fifth Circuit decided on May 5, 1936, subsection (s) of Section 75 of the National Bankruptcy Act was declared constitutional; while in the case of United etc. vs. Pamp, United States Circuit Court of Appeals for the Eighth Circuit, 83 F. (2nd) 493, decided May 11, 1936, and in the case of Lafayette Life Insurance Company vs. Lowmon, Circuit Court of Appeals for the Seventh Circuit, 79 F. (2nd) 887 the same act was declared unconstitutional.

That as he is informed there are a number of other like cases pending and undecided in the United States Circuit Court of Appeals, Seventh Circuit and other Circuits and various District Courts: That the

failure of the Circuit Court of Appeals of said seventh circuit to follow the decision of the Federal Supreme Court throws the meaning of this subsection into confusion and calls for an authoritive expression of the Federal Supreme Court on the validity of and proper construction of this amended Subsection (s).

(D). Further the petitioner is advised that said decisions against the constitutionality of said amended subsection (s) of Section 75 of the Federal Bankruptcy Act are untenable and without any foundation in law and are in direct conflict with the decision of the Supreme Court of the United States, in said (Va.) Wright case and are in conflict with the intention of Congress in the enactment of this moratorium Act; that all of said decisions of said inferior Courts holding said subsection (s) void constitute decisions of an important question of the Federal Bankruptcy law which affects many thousands of cases of insolvent farmers. That the Federal Supreme Court in said (Va.) Wright case held: "This legislation (Subsection (s)) is designed to aid victims of the general economic depression."

81 L. Ed. Adv. Op. 487 (495).

That said decisions holding said subsection (s) unconstitutional are defeating the intent of Congress and overthrowing the decision of this Court in the (Va.) Wright case and depriving thousands of farmers and their families of their homes and the savings of a lifetime.

(E). That aside from all other considerations above stated, property rights and farm lands in the basic industry of the Country, running into vast

sums of money, affecting with uncertainty and with suspense both creditor and debtor and arising in every part of the agricultural sections of the whole Country are involved in the administration of this remedial Act and that the necessity for one uniform statement of the law from this Court is an urgent economic necessity. That Appellant will lose his Home if said decision of the Supreme Court is not upheld by said Circuit Court of Appeals.

(F). That besides this, the Supreme Court in said (Va.) Wright case (81 L. Ed. Adv. opinion 487) in holding said Subsection (s) valid overruled said Circuit Court of Appeals of the Seventh Circuit in the case of LaFayette Life Insurance Company vs. Lowmon, 79 F. (2nd) 887 in which it held said Subsection (s) void. That the action of said Circuit Court of Appeals in the Wright case (case at Bar) in failing to follow the decision of the Federal Supreme Court in said (Va.) Wright case in the instant case and adhering to said Lowmon case has brought about untold conflict among the Federal decisions and confusion in the decisions in many of the District Courts and Circuit Courts of Appeals in the whole country and said action of said Circuit Court of Appeals of the Seventh Circuit calls for an authoritative and elucidating decision from the Supreme Court to remove said conflict and confusion and to clarify the construction of said Subsection (s) and for the exercise of its Supreme power of supervision in our Judicial system.

Wherefore, your petitioner prays that a writ of certiorari be issued under the seal of this Court in

this case, directed to the Honorable Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify and transmit to this Honorable Court, in manner and form as provided by law, a complete transcript of the record and proceedings in said Cirucit Court of Appeals had in cause Nos. 6183-4 entitled: In the matter of James M. Wright, Debtor, James M. Wright, Appellant, vs. Union Central Life Insurance Company, Appellee, to the end that this cause may be reviewed and determined by this Honorable Court as provided by the Laws and Rules of the United States. And that said order and judgment of said Circuit Court of Appeals be in all things reversed by this Court and for all such other relief as he may be entitled to as to this Court may seem proper in the premises.

Respectfully submitted,

Dated this 29th
day of December,
1937.

James M. Wright per

SAMUEL E. COOK,
Huntington, Indiana,
Member of the Bar of the
Federal Supreme Court.

WM. LEMKE,
Fargo, N. Dakota,
Counsel for Petitioner.

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IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT,
Petitioner and Appellant Below.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Respondent and Appellee Below.

To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF THE CIRCUIT COURT OF APPEALS.

The opinion of the Court is set out in the record pages 44 to 51 inclusive and reported in 91 Fed. (2nd) 894. In substance it held that the petitioner at the time of filing his petition under Section 75 of the Bankruptcy Act and when he amended his petition under Subsection (s) of said Section 75, had

the right to redeem from the Sheriff's sale, thus holding that he and his land were brought within the jurisdiction of the Bankruptcy Court. That his right to redeem expired July 20, 1936. That Congress had no power to extend the period of redemption and that Subsection (s) was therefore unconstitutional and refused to grant him the benefits provided in said Subsection and affirmed the order and judgment of the District Court which refused to allow his land to be placed back in the schedules and refused to allow him to amend the same. (R. 6184-45-47-48). In other words that the law of Indiana was superior to and restricted the powers of Congress over the subject of bankruptcies.

II.

JURISDICTION OF THIS COURT.

(1). The final order overruling the petition for rehearing was entered September 20, 1937.

The three months time to file a petition for a writ does not begin to run until the petition for rehearing is ruled upon—making the opinion or decision final.

6 Cyc. Fed. Proc. Sec. 2751, p. 170.
Morse vs. United States 70 L. Ed. 518-20.
Chicago, etc. vs. Basham 63 L. Ed. 534-5.

(2). A review on writ of certiorari is a matter of sound judicial discretion and will be granted only where there are special reasons therefor. Rules 38 Supreme Court, Subdivision 5 (b). The following cases are named: "(b) Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; . . . . or has decided an important ques-

tion of general law in a way probably untenable or in conflict with the weight of authority; or has decided a Federal question in a way probably in conflict with applicable decisions of this (Supreme Court) or has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision. (To make the laws of Congress Supreme and one harmonious whole).

Rule 38 Supreme Court (5) (b) p. 31-32 (June 5, 1928).

(3). The District Court had refused to review the order of the Referee striking the petitioner's real estate from the schedules and approved the same. (R. 6183, p.....).

That Court denied him the right to amend his schedules and reinstate his real estate. (R. 6184-9) (R. opinion 44).

The Circuit Court of Appeals in its opinion found the petitioner's appeal and real estate was properly before that Court and found that at the time of the enactment of subsection (s) he had an interest in the land i.e. the right to redeem; that he had this right on August 28, 1935, and on October 11, 1935, when he amended his petition under this Subsection (s); that his right expired at the end of the statutory year under the Indiana law (R. 6184-47).

That the State law controlled and Congress had no power to extend the period of redemption and that Subsection (s) was null and void (R. 6184-47-48). That the Court refused to apply the ruling of this Court (as to said 200 acre tract) in Wright vs.

Vinton Branch of Mountain Trust Bank of Roanoke (March 29, 1937—81 L. Ed. Adv. Opinions 487). That instead of following said decision of this Court as to said 200 acre tract it based its opinion in the case at Bar on the erroneous decision in LaFayette Life Insurance Company vs. Lowmon, 79 F. (2nd) 887. Hence, one of grave errors of the Court of Appeals was in applying its decision which had been overruled instead of the decision of this Court in the above case and in effect holding that this Act of Congress was void because it conflicted with the law of Indiana. The doctrine of the latter case had been rejected by this Court in the (Va.) Wright case. That this Court in holding Subsection (s) valid had rejected the doctrine of the Lowmon case and overruled it. This Court in Wright vs. Mountain Trust Bank, supra, 81, L. Ed. 487, p. 488 mentions the Lowmon case and had to overrule it to remove the conflict and harmonize the decisions on this Subsection (s). This has brought about such a conflict and confusion of authority on this important question as to bring the matter within the language of Rule 38 (5) (b) set out above and bring the matter within the jurisdiction of this Court to have the record in this case brought up to this Court for review to the end that said conflict and confusion be removed and that the inferior Federal Courts will know what construction to place upon said Subsection (s) and that the many distressed farmers will know what their rights are and said condition loudly calls for an exercise of this Court's power of supervision—Its supreme power over all other Federal Courts to declare the laws of

Congress supreme (when within its sphere) and to remove conflict and establish uniformity.

(4).. The Rule which sustains the jurisdiction of this Court has been set out above. (Rule 38 (5) (b). That rule gives this Court power to grant certiorari in the case at Bar to bring the record of the Circuit Court of Appeals before this Court for revision and to remove the conflict which this decision in the case at Bar has brought about. The decision in Wright vs. Mountain Trust Bank (81 L. Ed. 487) shows the case at Bar comes within the jurisdiction of this Court for review and supervision.

III.
STATEMENT OF THE CASE.

This has already been done in the preceding petition under head I, Paragraphs (1) (2) (3) (4) (5) (6) (7) and (8), PP. 3, 4 and 5.

IV.
SPECIFICATION OF ERRORS

The assignment of errors which was a part of the appeal from the District Court to the Circuit Court of Appeals and which brought said errors before the latter are set out in the printed record in No. 6184, pp. 11, 12 and 13. That among these are the following: "4. That said Court (District) Court erred in holding that the Debtor was not entitled to the benefits of the provisions of the amended Subsection (s) of Section 75 of the Bankruptcy Act of August 28, 1935." "5. That the Court erred in depriving the Debtor of the benefits and relief granted in said amended Subsection (s) of August 28, 1935."

The petitioner intends to urge and present said errors 4 and 5 in this Court and any other plain errors of said Honorable Court of Appeals.

In addition to the above the action of the Honorable Court of Appeals in making the decision in the case at Bar and the Reardanz case in conflict with the decision of this Court in Wright vs. Mountain Trust Bank 81 L. Ed. 487 and other decisions and its refusal to follow the latter decision in the case at Bar as to the 200 acre tract and in adhering to the erroneous doctrine of the Lowmon case (which had been overruled by this Court) in deciding the case at Bar and holding Subsection (s) void and in affirming the erroneous decisions of the District Court are an assignment of the plain errors of said Circuit Court of Appeals in this Court and bring said errors before this Court for consideration (Rule 38 Sup. Court (5) (b). That the petitioner will also urge and present the error of the Court in not applying the ruling in the (Va.) Wright case to said 80.31 acre tract.

V.

THE ARGUMENT.

(1). Summary of Argument, points and authorities, (as to the 200 acre tract).

Point (a). The petition in bankruptcy as to the 200 acre tract was filed in the District Court as shown above on October 29th or 30th, 1934. The facts as to said tract are exactly like the facts in the decision of this Court in the (Va.) Wright case on March 29, 1937. (The petition in said case was filed before the Sheriff's sale) and hence said amended Subsection (s) was valid as to said 200 acre tract

and the Honorable Circuit Court of Appeals should have applied said ruling of this court to the case at Bar and should have held it valid as to said tract and reversed the decision of said District Court. (The lower Court overlooked this point as to the 200 acres).

Wright vs. Mountain Trust Bank, 81 L. Ed. Adv. Opinions 487.

Point (b). Paragraph (2) of Subsection (s) provides for a stay of all proceedings and moratorium of three years. That during said period the debtor shall be permitted to remain in possession of all of his property, provided he pays a reasonable rental. Paragraph 3 provides at the end of the three years or prior the debtor may purchase the land at its appraised value. This Court held said paragraphs valid and thereby held that Congress had the power to extend the period of redemption for three years.

Wright vs. Mountain Trust Bank, 81 L. Ed. Adv. Opinions 487 (491-492-493-494 and 495). Subsection (s) U.S.C.A. 11-203 Frazier Lemke Act Aug. 25, 1935, p. 166-168.

Point (c). On the other hand said Honorable Circuit Court of Appeals held that Congress had no power to extend the period of redemption beyond the time allowed by the Statute of Indiana. (Rec. 6184-47-48).

Point (d). This Honorable Supreme Court when it held that Congress had the power to extend the time of redemption three years from August 28, 1935, intended that said rule should apply to all cases coming under Subsection (s) of August 28, 1935, and

be "The Supreme Law of the Land," on said subject and it did not mean that when said rule came in conflict with a State law, that the State law could restrict and nullify this power of Congress but meant that said Act was supreme and that the laws of the States to the contrary must yield and give way.

No citations deemed necessary.

Point (e). This Honorable Court took up every paragraph of said Subsection (s) and held each a valid exercise of the powers of Congress over the subject of bankruptcies.

Wright vs. Mountain Trust 81 L. Ed. 487.

Point (f). It was the duty of the Honorable Circuit Court of Appeals to follow and apply said decision of the Supreme Court in the case at Bar as to said 200 acre tract.

Self-evident.

Point (g). If there was any doubt as to said decision of this Court, it was the duty of said Circuit Court of Appeals to resolve the doubt in favor of the ruling of this Court and in favor of the validity of said Subsection (s).

Wright vs. Mountain, etc. 81 L. Ed. 487, citing.

Crowell vs. Benson 285 U.S. 22-62 (492) 76 L. Ed. 598-619.

Point (h). But this Honorable Court in said Wright case went far beyond the mere powers of Congress to postpone the payment and enforcement of a mortgage debt in bankruptcy cases (which only affects the remedy to enforce and does not impair the obligation of the contract) and that even

though this Subsection (s) deprived the creditor of rights which actually impaired the obligation of the contract and lien, yet under its broad powers—"To establish . . . . . uniform laws on the subject of bankruptcies throughout the United States" . . . . . it had the power to take away those rights and impair the contract.

Wright vs. Mountain, etc. 81 L. Ed. 487. (496-497). This decision ranks with McCulloch vs. Maryland and other celebrated decisions of this great court.

Point (i). In order that no one hereafter should undertake to quibble about what the Court was deciding, it pointed out: "The legislation (Subsection (s)) is designed to aid victims of the general economic depression."

Wright case 81 L. Ed. 487 (495).

In substance that it was an emergency act to aid and enabled those engaged in the basic industry of the Country to save their homes from forced sales and confiscations, Par. 9 (6) Subsection (s).

"The farmers' proceeding in bankruptcy for rehabilitation resembles that of a corporation for reorganization." "As to the latter it is expressly provided that the debtor may to some extent, be left in possession, 11 U.S.C.A. 207 (c); and it is common practice to appoint as receivers one of the officials of the corporation."

Wright case 81 L. Ed. 487 (495).

To arrive at the intent of Congress this Honorable Court considered reports of Congressional Committees and explanations given by the members of Con-

gress on the floor of the Senate and House by those in charge of the measure.

Wright case 487 (493-5).

The Court further said: "A Court of Bankruptcy may affect the interests of lien holders in many ways. To carry out the purpose of the bankruptcy Act, it may direct that all liens upon property forming part of the bankrupt's estate be marshalled; or that the property be sold free of incumbrances and the rights of all lien holders be transferred to the proceeds of the sale."

Citing Van Huffel vs. Harkelrode, 76 L. Ed. 256-258.

Wright case 81 L. Ed. 487 (497).

And further: "Despite the peremptory terms of a pledge, it may enjoin sale of collateral, if it finds that the sale would hinder or delay preparation or consummation of a plan of reorganization.

Citing Continental Ill. etc. vs. Chicago R. I. etc. 79 L. Ed. 1110-1131.

Wright case 81 L. Ed. 487 (497).

And further: "It may enjoin like action by a mortgagee which would defeat purpose of Subsection (s) to effect rehabilitation (reorganizing or refinancing himself of the farmer mortgager"). We will add that this act of Congress and the decision of this Honorable Court upholding it put the farmer on an equality with other insolvent industries and marks a new epoch in the history of remedial agricultural and bankruptcy legislation. The Federal Courts have been granting these same rights to other insolvent industries for some years.

Point (j). Paragraph (n) of said Subsection (s)

provides: "The filing of a petition for relief under this section shall subject the farmer and his property wherever located to the exclusive jurisdiction of the court." His rights vested on that date.

11 U.S.C.A. 75 (n).

Point (k). The new Subsection (s) Paragraph (5) continued said rights. "(5) This Act shall be held to apply to all existing cases now pending in any Federal Court under this Act . . . . . and all cases that have been dismissed by any conciliation commissioner, referee, or Court, because of the Supreme Court decision holding the former Subsection (s) unconstitutional, shall be promptly reinstated."

11 U.S.C.A. 203 (5).

Point (l). Paragraph 6 declares the Act to be an emergency measure.

Point (m). Conceding that this new Act takes away the right of the mortgagee to a deed for the land under the laws of Indiana, yet this Court held that Congress in the emergency had the power to extend the period of redemption for three years to enable the farmer to re-finance himself and pay into Court the appraised value of the land and save his Home.

Wright case 81 L. Ed. 487 (492) Par. (3) Act August 28, 1935.

Point (n). The power to enact laws on the subject of bankruptcies delegated to Congress in the Constitution (Art. 1, Sec. 8, Par. 4) is one of the greatest of its powers. It stands in the class with the power to declare war, to coin money and regulate the value thereof, to declare what shall be a legal tender or declare an embargo. The exercise of these

great constitutional powers means the impairment of the obligations of contracts and untold millions of damages to the citizens of the United States.

Gold cases — Norman vs. Baltimore, Vol. 55 Supreme Court, Rep. 407, (79 L. Ed. 885 (900).

For the incidental damages caused by the exercise of these constitutional powers, there is no remedy.

Supreme Court Reporter, March 1, 1935, p. 407 (415). See Legal Tender cases, Knox vs. Lee, 12 Wall, 549-551, 20 L. Ed. 305.

Juilliard case, 110 U.S. 4.28 L. Ed. 211.

POINTS AND AUTHORITIES AS TO THE 80.31 ACRE TRACT.

It has been shown above that this tract had been sold at Sheriff's sale before October 29th or 30th, 1934, when the petition was filed. This land was also included in the petition. The filing of the petition in bankruptcy during the year of redemption was in time and gives the Bankruptcy Court jurisdiction of the bankrupt and his property.

In the Act of August 28, 1935, Congress provided in Section 4 in amending Subsection (n) of Section 75 that petitions in bankruptcy could be filed during the year of redemption. This should be considered as declaratory. Section 4 (n) Act. August 28, 1935.

Point (a). This Court held that said Subsection (s) was constitutional in all cases whether the bankruptcy petition was filed before or after the Sheriff's sale under the state law.

Wright vs. Mountain Trust Bank, 81 L. Ed. 487.

Point (b). The Honorable Circuit Court of Appeals based its opinion on Lafayette Life Insurance Co. vs. Lowmon, 79 F. (2nd) 887. (R. opinion 6184-47-48).

Point (c). In the Lowmon case the debtor had filed her petition in bankruptcy after the Sheriff's sale or during the year of redemption. In the case at Bar as to the 80.31 acres the petition was also filed during the year of redemption. The Supreme Court in said (Va.) Wright case in its preliminary statement showing the grounds for certiorari, singled out said Lowmon case and others and referred to the fact that the Circuit Court of Appeals in said case had held said Subsection (s) invalid and that in the 5th Circuit in Dallas Bank vs. Davis (83 F. (2nd) 493) the Circuit Court of Appeals in said 5th Circuit and other cases had held the same act valid. This Lowmon case was one of the causes of the conflict with said decision in other Circuits. It had to be overruled or disapproved to bring about uniformity. Uniformity could not be brought about by leaving the erroneous doctrine of said Lowmon case stand. It had to be overruled and was overruled.

Then the Court said: "Because of this conflict (the conflict caused by the decision in the Lowmon case) and the importance of the question, we granted certiorari."

Wright vs. Mountain Trust Bank 81 L. Ed. 488, 2nd column.

Point (d). Then the Supreme Court took up every paragraph of amended Subsection (s) and held it constitutional.

Wright case above.

Point (e). The Supreme Court in holding said Subsection (s) constitutional necessarily overruled the Lowmon case, and rejected the doctrine on which it was based.

Point (f). Since the Supreme Court cited the Lowmon case and that it held the act void, it must be presumed that this Court understood that decision and the facts therein, i.e. that in that case the Circuit Court of Appeals made the case turn on the point that the debtor had filed her petition in bankruptcy during the year of redemption and that it rejected such a doctrine.

Point (g). If this Court in the (Va.) Wright case had intended that its decision should only apply to cases where the petition in bankruptcy had been filed before the Sheriff's sale, and did not apply to those filed during the year of redemption, it would have said so. It would not have left any doubt on that point.

Point (h). The Honorable Circuit Court of Appeals in the case at Bar had no right to place a limitation on the decision of this Court in the (Va.) Wright case which this Court did not itself put thereon.

Point (i). It was the duty of said Circuit Court of Appeals to apply said decision of this Court to cases filed before and after the Sheriff's sale and if it was in doubt on that point it should have certified the question to this Court as provided by the statute and the Rules of this Court instead of placing upon

this insolvent farmer the whole burden of taking this case to the Federal Supreme Court.

11 U.S.C.A. Sec. 239. Judicial Code as amended February 13, 1925 (Rule 37 (1) Sup. Ct.) June 5, 1928.

Point (j). Under the law of Indiana the mortgagor (the petitioner) remains the owner of the land until the end of the year of redemption.

Neff vs. Hagaman, 78 Ind. 57 (62).

Robertson vs. Van Cleave, 129 Ind. 217 (225).

Burns Ind. Stat. 1926, Sec. 831.

Rev. 1933, Sec. 2-3919.

Point (k). This Bankruptcy Act is a remedial Act and it was the duty of the Court of Appeals to liberally construe it to carry out the purposes for which it was intended.

Remington on Bankruptcy (4th Ed.) Vol. 1, Sec. 25.

Many decisions could be cited.

Point (l). The right to redeem land from a Sheriff's sale or the equity of redemption is property. It can be levied on and sold on execution under the Indiana Statute.

Burns Ind. Stat. 1926, Sec. 795.

Point (m). A judgment is a lien against the equity of redemption which may be sold on execution.

Julian vs. Beal, 26 Ind. 220 (222).

Point (n). "It must be conceded that the right of redemption is a property right."

In re-Argyle Lake Shore, etc. 78 F. (2nd) 491.

Point (o). It follows that if the petition in bankruptcy is filed while the debtor is in possession and has such an interest in the land, it is in time and gives the Bankruptcy Court exclusive jurisdiction over the debtor and all of his land and Congress had the power to extend the statutory period of redemption.

In re-Cope 8th Fed. Supp. 961.
In re-Nelson 9th Fed. Supp. 557.
U.S. Bank vs. Pamp, 83 Fed. (2nd) 493.
In re-Bradford 77 Fed. (2nd) 992.
In re-Duffy, 9th Fed. Supp. 166.
In re-Klein 9th Fed. Supp. 57.

Point (p). Such a narrow strained construction of Subsection (s) as was given by the Circuit Court of Appeals is foreign to the intent of Congress (and Mr. Lincoln said: "The intent of the lawgiver is the law") and defeated the purpose for which this Act was passed. Congress intended to save farm homes —not to confiscate them. The reports of the committees of the House and Senate on Subsection (s) show it was understood that it applied to petitions filed during the year of redemption.

Point (q). No difference what the rights of the mortgagee were under the statute of Indiana, they must yield to the "Supreme law of the land." Congress in the exercise of this great power in an emergency had the power to impair that right and take it away.

Wright vs. Mountain Trust Bank, 81 L. Ed. 487.

Norman vs. Baltimore, Supreme Court Reporter, March 1, 1935, 407 (414-15) 79 L. Ed. 885.

Knox vs. Lee, 12 Wall, 549-551, 20 L. Ed. 305 and other Legal Tender cases, 28 L. Ed. 211.

Point (r).. Grant it is the duty of the Federal Courts to defend the constitution when the National Legislature transcends its powers, and hold such laws void, yet on the other hand it is their solemn duty to give to the Constitution and the laws of Congress enacted under it, a liberal construction and give to the people who made it and who have preserved it, all of the rights expressly or impliedly granted to them therein. "For the letter killeth but the spirit giveth life." The true rule of interpretation of the Constitution is well expressed by this Court in Home, etc. vs. Blaisdell, 78 Law Ed. 413 (431). You need look no further.

ARGUMENT IN SUPPORT OF SAID POINTS AND AUTHORITIES AS TO THE 200 ACRES WHERE THE PETITION PRECEDED THE SHERIFF'S SALE OF THE LAND.

(A). As to said 200 acre tract, the decision of this Court in the (Va.) Wright case above where the facts were the same as in the case at Bar, settles the question beyond all controversy that said Subsection (s) is valid as to said tract and that said Court of Appeals erred in not applying and following it and that it should have reversed the District Court.

(B). That as to said 80.31 acres the statement of said propositions and the citations supporting them

is a sufficient argument in and of itself. Any attempt to argue them would be largely a repetition. The Court of Appeals should have reversed the District Court as to that. Enough has been said for the present.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers; that this Court should grant said petition for a writ of certiorari herein commanding said Honorable Circuit Court of Appeals of said Circuit to send the record and proceedings in said cause to this Court without delay so that this Court may review and act thereon as of right and according to law and as ought to be done. And the petitioner prays this Court to reverse the order and judgment of said Circuit Court of Appeals as to both tracts of said land.

Respectfully submitted,

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APPENDIX.

Pertinent Quotations from Bankruptcy Act. August 28, 1935.

Sec. 4. That section 75 of said Act, as amended, be further amended by amending subsection (n) to read as follows:

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

"Sec. 6. That section 75 of said Act, as amended, be further amended by adding a new subsection (s), after subsection (r), to read as follows:

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section."

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject

to all existing mortgages, liens, pledges, or encumbrances."

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their inter-

ests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation."

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: **Provided**, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: **Provided**, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however,

the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act."

"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act, as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection (s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section."

"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceed to liquidate the estate."

Approved, August 28, 1935.

11 U.S.C.A. 203, Subsection (s), Par. (1) (2) (3) (5) and (6).

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